

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed October 27, 2003 ("*Office Action*"). Claims 1-31 were pending in the Application and stand rejected. Applicant respectfully requests reconsideration and favorable action in this case.

Claim Rejections – 35 U.S.C. §102

The Examiner rejects Claims 1, 2, 8, 9, 18, 19, 25, and 26 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,057,943 issued to Kweon, et al. ("*Kweon*"). To support a rejection under §102, a single prior art reference must describe each and every element as set forth in the claim, either expressly or inherently. *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131.

Applicant's independent Claim 1 recites:

A communications apparatus comprising:
a client interface operable to receive point-to-point protocol (PPP) data;
a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission; and
a network interface operable to establish a link with a remote location, to negotiate a facsimile communications session with the remote location, and to communicate the facsimile page transmission to the remote location.

Applicant respectfully submits that *Kweon* fails to disclose every element of this Claim.

Among other aspects of Claim 1, *Kweon* fails to disclose "a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission." As teaching this element, the Examiner cites portions of *Kweon* that mention both point-to-point protocol (PPP) and facsimile communications. In these and other portions of the disclosure, *Kweon* teaches encapsulating modem commands and facsimile image data using upper layer protocols, such as PPP. However, encapsulating modem commands or facsimile images using PPP does not show "a protocol module operable to encapsulate the PPP data as a payload of a facsimile page transmission." Thus, for at least this reason, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of Claim 1.

These reasons apply similarly with respect to Applicant's independent Claims 8, 18, and 25. Claim 2 depends from Claim 1; Claim 9 depends from Claim 8; Claim 19 depends from Claim 18; and Claim 26 depends from Claim 25. Therefore, for substantially the same

reasons, Applicant respectfully requests reconsideration and withdrawal of the rejections of Claims 1, 2, 8, 9, 18, 19, 25, and 26.

Claim Rejections – 35 U.S.C. §103

The Examiner rejects Claims 5, 6, 12, 15, 22, and 29 under 35 U.S.C. §103(a) as being unpatentable over *Kweon*. The Examiner also rejected Claims 3, 4, 7, 10, 11, 13, 14, 17, 20, 21, 23, 24, 27, 28, 30, and 31 under 35 U.S.C. §103(a) as being unpatentable over *Kweon* in view of U.S. Patent No. 5,854,830 issued to Kenmochi (“*Kenmochi*”). Finally, the Examiner rejected Claim 16 under 35 U.S.C. §103(a) as being unpatentable over *Kweon* in view of U.S. Patent No. 6,330,499 issued to Chou, et al. (“*Chou*”). To establish obviousness of a claimed invention under §103, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974); M.P.E.P. §2143.03.

Claim 15

The Examiner rejects independent Claim 15 under 35 U.S.C. §103(a) as being unpatentable over *Kweon*. Applicant’s Claim 15 recites:

A communications system comprising:
a mobile unit operable to establish a link with a server using a wireless digital network, to negotiate a facsimile communications session with the server, to encapsulate client point-to-point protocol (PPP) data as a payload of a facsimile page transmission, and to communicate the facsimile page transmission to the server; and
a server operable to receive the facsimile page transmission, to extract the client PPP data, to encapsulate server PPP data as a payload of a page transmission acknowledgement, and to communicate the acknowledgement to the mobile station.

Applicant respectfully submits that *Kweon* fails to teach or suggest every element of this Claim.

Among other aspects of Claim 15, *Kweon* fails to disclose “a mobile unit operable . . . to encapsulate client point-to-point protocol (PPP) data as a payload of a facsimile page transmission.” As teaching this element, the Examiner cites portions of *Kweon* that mention both PPP and facsimile communications. As discussed above with regard to Claim 1, in these and other portions of the disclosure, *Kweon* teaches encapsulating modem commands and facsimile image data using upper layer protocols, such as PPP. However, encapsulating

modem commands or facsimile images using PPP does not show “a mobile unit operable . . . to encapsulate client point-to-point protocol (PPP) data as a payload of a facsimile page transmission.”

Furthermore, Applicant points out that the Examiner fails to cite any reference with respect to “a server operable . . . to extract the client PPP data.” Instead, the Examiner states that “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made in Kweon’s method to have the server to extract the received client PPP data that was encapsulated.” *Office Action*, page 5. Applicant respectfully disagrees. *Kweon* fails to show any encapsulation of PPP data. It is thus not obvious to perform an operation that is not even possible given the data disclosed by *Kweon*. Therefore, for at least these reasons, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of Claim 15.

Claims 5, 6, 12, 22, and 29

The Examiner also rejects Claims 5, 6, 12, 22, and 29 under 35 U.S.C. §103(a) as being unpatentable over *Kweon*. Claims 5 and 6 depend from Claim 1; Claim 12 depends from Claim 8; Claim 22 depends from Claim 18; and Claim 29 depends from Claim 25. Claims 1, 8, 18, and 25 were shown above to be patentable. Thus, for at least these reasons, Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 5, 6, 12, 22, and 29.

Furthermore, Applicant points out that the Examiner failed to cite any reference with respect to various elements of Claims 5, 6, 12, 22, and 29. While in limited circumstances an examiner may take official notice of facts not in the record or rely on “common knowledge” in making a rejection, “such rejections should be judiciously applied.” M.P.E.P. §2144.03. It is not appropriate for an examiner to take official notice of facts without citing a prior art reference “where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” *Id.* (citing *In re Ahlert*, 165 U.S.P.Q. 418, 420-21 (C.C.P.A. 1970)). To the extent that the Examiner maintains these rejections based on “Official Notice,” “well known prior art,” “common knowledge,” or other information within the Examiner’s personal knowledge, Applicant respectfully requests the Examiner to cite a reference or references in support of these positions or provide an affidavit in accordance with M.P.E.P. §2144.03 and 37 C.F.R. §1.104(d)(2).

Claims 3, 4, 7, 10, 11, 13, 14, 17, 20, 21, 23, 24, 27, 28, 30, and 31

The Examiner rejects Claims 3, 4, 7, 10, 11, 13, 14, 17, 20, 21, 23, 24, 27, 28, 30, and 31 under 35 U.S.C. §103(a) as being unpatentable over *Kweon* in view of *Kenmochi*. Claims 3, 4, and 7 depend from Claim 1; Claims 10, 11, 13, and 14 depend from Claim 8; Claim 17 depends from Claim 15; Claims 20, 21, 23, and 24 depend from Claim 18; and Claims 27, 28, 30, and 31 depend from Claim 25. Claims 1, 8, 15, 18, and 25 were shown above to be allowable over *Kweon*. The introduction of *Kenmochi* fails to provide the elements of Applicant's Claims 1, 8, 15, 18, and 25 not shown by *Kweon*. Thus, for at least these reasons, Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 3, 4, 7, 10, 11, 13, 14, 17, 20, 21, 23, 24, 27, 28, 30, and 31, which depend from independent claims shown above to be allowable.

Claim 16

The Examiner rejects Claim 16 under 35 U.S.C. §103(a) as being unpatentable over *Kweon* in view of *Chou*. Claim 16 depends from Claim 15, which was shown above to be allowable over *Kweon*. The introduction of *Chou* fails to provide any of the elements of Applicant's Claim 15 not shown by *Kweon*. Thus, for at least this reason, Applicant respectfully requests reconsideration and withdrawal of the rejection of Claim 16.

CONCLUSION

Applicant has made an earnest attempt to place the Application in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of the Application in any manner, the undersigned attorney for Applicant stands ready to conduct such a conference at the convenience of the Examiner.

Although no fees are believed to be currently due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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